UNITED NATIONS

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ENGLISH* AND FRENCH ONLY

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

SWITZERLAND

Communicated by the Government of Switzerland

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

FEDERAL ACT ON INTERNATIONAL MUTUAL ASSISTANCE IN CRIMINAL MATTERS (IMAC)

(ACT ON INTERNATIONAL CRIMINAL ASSISTANCE)

of the 20th of March, 1981

The Federal Assembly of the Swiss Confederation,

based on articles 103 and 114bis of the Federal Constitution,
after examining a message by the Federal Council of the 8th of March, 1976,

resolves (as follows):

PART 1: GENERAL PROVISIONS

CHAPTER 1: SCOPE OF APPLICATION

SECTION 1: SUBJECT AND LIMITS OF COOPERATION

ART. 1 Subject

[1] Provided that international agreements do not provide otherwise, this act shall govern all procedures of international cooperation in criminal matters, especially

a. the extradition of persons who are the subjects of criminal prosecution or convicted (part 2);

b. assistance aimed at supporting criminal proceedings abroad (part 3);

c. the transfer of proceedings and punishment of offences (part 4);

d. the execution of foreign criminal judgments (part 5).

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*) Note by the Secretariat: The present document is a direct reproduction of the text translated into English as provided to the Secretariat by the Government of Switzerland.

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2 In the application of this act, the sovereignty, security, public order or similar essential interests of Switzerland shall be taken into account.

3 This act shall apply only to criminal matters in which an appeal to a judge can be made according to the law of the requesting state.

4 This act shall confer no right to demand international co-operation in criminal matters.

SECTION 2: EXCLUSION OF REQUESTS

ART. 2 Procedural Defects

A request for cooperation in criminal matters shall not be granted if there are reasons to believe that the foreign proceeding

a. does not meet the procedural requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4th November, 1950 , or

b. is carried out so as to prosecute or punish a person on account of his political opinions, his belonging to a certain social group, his race, religion or nationality, or

c. could result in aggravating the situation of the person pursued for any of the reasons mentioned under letter b, or

d. is tainted with other grave defects.

ART. 3 Nature of the Offence

1 A request shall not be granted if the subject of the proceeding is an act which, according to the Swiss concept, has a predominantly political character, constitutes a violation of the obligation to perform military or similar service or appears to be directed against the national defence or military strength of the requesting state.

2 The plea (that an act is) of (a) political character shall not be taken into account if the act

a. was aimed at the extermination or suppression of a population group on account of nationality, race, religion or ethnical, social or political relationship or

b. appears particularly reprehensible because the offender, for the purpose of extortion or duress, jeopardized or threatened to jeopardize freedom, life or limb of men, especially by hijacking planes, taking hostages or using means of mass extermination.

3 A request shall not be granted if the subject of the proceeding is an offence which appears to be aimed at reducing fiscal duties or taxes or which violates regulations concerning currency, trade or economic policy. However, a request for judicial assistance under part 3 of this act may be granted if the subject of the proceeding is a duty or tax fraud.

ART. 4 Importance of the Offence

A request shall be rejected if the importance of the offence does not justify the carrying out of the proceedings.

ART. 5 Extinction of the Penal Claim

1 A request shall not be granted insofar as

a. in Switzerland or in the State where the offence was committed, the judge

- acquitted the defendant or discontinued the proceedings for material reasons or

- renounced or provisionally abstained from imposing a sanction;

b. the sanction was executed or cannot be executed according to the laws of the State where the sentence was passed;

c. its execution requires compulsory process and the prosecution or execution of the sentence were absolutely barred under Swiss law by the statute of limitations.

2 Paragraph 1, letters a and b do not apply if the requesting State asserts that there are reasons for a revision of the final sentence in the sense of article 229 of the Act on Federal Criminal Procedure .

ART. 6 Concurrence of Exclusion and Admissibility of Cooperation

[1] If the act imputed to the person pursued falls under several articles of the Swiss penal law, the request may be granted only with regard to these offences for which there are no reasons for exclusion and if there is a guarantee that the requesting State will respect the conditions imposed.

[2] Cooperation shall not be permitted if the proceedings concern an act which falls under several articles of the Swiss or foreign penal law and if, with regard to one of these offences, which covers the act in all its elements, a request may not be granted.

SECTION 3: SPECIAL RULES

ART. 7 Swiss Nationals

[1] No Swiss national may, without his written consent, be extradited or surrendered to a foreign State for prosecution or execution of sentence. The consent may be withdrawn until the time that the surrender is ordered.

[2] Paragraph 1 shall not apply to the transit or return of a Swiss national who is temporarily surrendered by a third State to the Swiss authorities.

ART. 8 Reciprocity

[1] As a rule, a request shall be granted only if the requesting State guarantees reciprocity. The Federal Office for Police Matters of the Federal Department of Justice and Police (Federal Office) may require a guarantee of reciprocity if this is deemed necessary.

[2] Reciprocity is in particular not necessary in cases of service of documents or if the execution of a request

a. seems advisable by reason of the type of offence or of the necessity of combating certain offences;

b. is likely to improve the situation of the person pursued or the prospects of his social rehabilitation;

c. serves to clarify an offence against a Swiss national.

[3] The Federal Council may, within the scope of this act, give other states a guarantee of reciprocity.

ART. 9 Protection of Privacy

In the execution of requests, the protection of privacy shall be determined according to the provisions on the right of witnesses to refuse testimony. The principles of article 69 of the Act on Federal Criminal Procedure shall apply to the search and to the placing under seal of documents.

ART. 10 Privacy of persons not involved in the criminal proceedings

[1] Pieces of information about the privacy of persons who, according to the request, are not involved in the criminal proceedings abroad, may be given if they seem imperative to establish the facts and if the seriousness of the offence justifies it.

[2] Disclosure of manufacturing or business secrets in the sense of article 273 of the Penal Code , or of facts which a bank must usually keep secret shall not be allowed if it may be assumed to cause essential prejudice to the Swiss economy and does not appear justified in relation to the seriousness of the offence.

[3] The executing authority shall obtain the opinion of the Federal Office before making a decision.

ART. 11 Legal Definitions

[1] A person pursued within the meaning of this act is any person suspected, under investigation, or affected by a sanction.

[2] A sanction is any punishment or (other penal) measure.

CHAPTER 2: APPLICABLE LAW

ART. 12 In General

If this act does not specify otherwise, the federal administrative authorities shall apply, by analogy, the Federal Act on Administrative Procedure and the cantonal authorities their own procedural rules. The procedural rules observed in criminal matters shall apply to acts of procedure.

ART. 13 Tolling of the Statute of Limitations. Petition for Punishment

[1] In proceedings according to this act, the following shall be considered to produce effect in Switzerland:

a. the tolling of the statute of limitations according to the law of the requesting State;

b. the petition for punishment filed with a foreign authority within the time limit provided for if the petition is required also according to Swiss law.

[2] If a petition for punishment is required only according to Swiss law, no sanction may be pronounced or executed in Switzerland if the victim makes objections.

ART. 14 Credit for Detention

Article 69 of the Swiss Penal Code shall be applicable for determining the credit for the period of detention suffered abroad pending trial or caused abroad by a proceeding according to this act.

ART. 15 Compensation

[1] The federal and cantonal provisions governing compensation for unjustified detention and other disadvantage shall apply, by analogy, to a proceeding which was carried out against a person pursued in Switzerland according to this act or abroad at the request of a Swiss authority.

[2] The Confederation shall pay the compensation if a federal authority makes or executes a request. It may require reimbursement from the canton which caused the request to be made.

CHAPTER 3: INTRASTATE PROCEDURE

SECTION 1: AUTHORITIES AND POWERS

ART. 16 Cantonal Authorities

[1] The cantons shall participate in the carrying out of extradition proceedings. If the federal law does not require otherwise, it is incumbent upon them to execute requests for other assistance, transfer of proceedings and execution of criminal judgments. The cantons shall be under the supervision of the Confederation as far as this act is applicable.

[2] The cantons shall determine competency, organisation and administration of the executing authorities.

ART. 17 Federal Authorities

[1] The Federal Department of Justice and Police (Department) shall decide cases under article 1, paragraph 2.

[2] The Federal Office shall receive the requests from abroad and present Swiss requests. It shall handle extradition requests and cause requests for other assistance, transfer of proceedings and execution of criminal judgments to be examined by the appropriate cantonal or federal authorities, if their execution is not obviously inadmissible.

3 It shall decide

a. whether to require a guarantee of reciprocity (art. 8 para. 1);

b. on the choice of the appropriate procedure (art. 19);

c. on the admissibility of Swiss requests (art. 30, para. 1).

4 It may transfer the carrying out of a proceeding partly or completely to the federal authority which would be competent for punishing the offence if it had been committed in Switzerland.

ART. 18 Provisional Measures

Upon express request by an other State, provisional measures may be taken to preserve the existing situation, to safeguard threatened legal interests or to protect jeopardized evidence if the proceeding according to this act does not appear obviously inadmissible or inappropriate. If any delay is dangerous and if there is sufficient information so as to determine whether all the conditions are met, these measures may be taken upon application of the Federal Office as soon as a request is announced.

ART. 19 Choice of Procedure

If the person pursued is abroad and if, according to the laws of the State to which the request is to be made, there is a choice between different procedures, preference shall be given to that which appears to assure the better social rehabilitation.

ART. 20 Suspension of the criminal proceeding or of the execution of a sanction

1 Upon application made by the Federal Office, the competent authority may temporarily suspend the criminal proceedings or the execution of a sanction against a person prosecuted abroad for another offence if

a. the sanction incurred in Switzerland is not of great importance in comparison to the one likely to be imposed abroad or

b. the execution in Switzerland does not seem appropriate.

2 Upon conclusion of the criminal proceedings abroad, the Swiss authority shall decide whether to resume the suspended proceedings or execution of the sanction.

SECTION 2: PROTECTION OF RIGHTS

ART. 21 Common Provisions

1 The person pursued may retain counsel. If he waives doing so or is not in a position to do so, counsel shall be officially appointed if the safeguarding of his interests so requires.

2 Other persons who are affected by the measure of judicial assistance or who, as injured parties, are present at enquiries, may, if the safeguard of their interests so requires, be assisted by counsel at the carrying out of the act of judicial assistance and, as far as the purpose of the investigation is not prejudiced, be represented by him.

3 Persons who are not the targets of foreign criminal proceedings may challenge decrees only if a measure concerns them personally or could prejudice their rights of defence in the criminal proceedings.

4 The appeal of a decree which grants extradition or the release of information from the privacy has a suspensive effect contrary to article 111 paragraph 2 of the Act on the Organisation of the Federal Administration of Justice (OJ) .

ART. 22 Notice Regarding Legal Remedies

1 Decrees and decisions of federal and cantonal authorities shall be valid only if they provide with notice regarding legal remedies.

2 The notice regarding legal remedies must mention the appeal allowed, the court to which the appeal shall lie and the time for appealing.

ART. 23 Appeal against Cantonal Decrees

The cantons admit one appeal against the decrees of the executing authorities.

ART. 24 Objection to Orders of the Federal Office

1 Whoever is affected by an order issued by the Federal Office according to this act and has an interest, which is worthy of protection, in modifying or rescinding the order may lodge an objection.

2 The objection must be filed in writing with the Federal Office within ten days after notice of the order. An appropriate additional period of time may be granted for substantiating it or for correcting faults. If the objection is not substantiated in time, it shall be considered withdrawn.

3 The objection has suspensive effect only if the execution of the order causes the objector irreparable damage or if other important reasons justify it.

4 If the objection cannot be settled informally, the Federal Office shall issue a decree. It may postpone doing so until the conclusion of its proceedings if no essential, irreparable prejudice to the objecting party can result. Such interim decrees may be appealed independently.

ART. 25 Administrative Court Appeal

1 Decrees of federal authorities of the first instance and of the highest cantonal appellate authorities shall be suject to administrative court appeal directly to the Federal (Supreme) Court (article 97 - 114 OJ) in so far as this act does not otherwise stipulate.

2 An appeal of a Swiss request to another State shall lie only if this State is requested to assume the criminal proceedings or the execution of a sentence. In this case, only the person pursued is entitled to appeal.

3 The Federal Office may file appeals of decrees of the highest cantonal appellate authorities. The cantonal authority is entitled to appeal against the refusal of the Federal Office to make a request.

4 An appeal may also be brought against inadmissible or obviously improper application of foreign law.

5 The provisions on the suspension of time limits (art. 34, para. 1 OJ) shall not apply to the time limits of this law.

6 The Federal (Supreme) Court shall not be bound by the applications made by the parties.

ART. 26 Administrative Appeal

Decrees of the Department according to article 17, paragraph 1 shall be subject to appeal to the Federal Council; decrees of the Federal Office according to article 17, paragraphs 2 and 3 shall be subject to appeal to the Department, which shall make the final decision.

CHAPTER 4: INTERSTATE PROCEDURE

ART. 27 General Rules for Requests

1 Articles 27 - 31 shall apply to all procedures under this act. Special rules of procedure provided in the other parts shall remain reserved.

2 Foreign requests shall be addressed directly to the Federal Office.

3 Requests which are addressed to an inappropriate authority shall be forwarded ex officio. The requesting authority shall be informed.

4 Requests in connection with a case of detention shall be dealt with without any delay.

5 Non-acceptance or refusal of a request shall be substantiated.

ART. 28 Form and Contents of Requests

1 Requests shall be reduced to writing.

2 To be stated in a request are:

a. the office from which it emanates and if necessary, the authority having criminal jurisdiction;

b. the subject matter of and the reason for the request;

c. the legal qualification of the offence;

d. indications as exact and comprehensive as possible on the person being the target of the criminal proceedings.

3 To determine the legal qualification of the offence, it shall be added

a. a summary of the relevant facts, except in cases of requests for service of process;

b. the text of the regulations applicable at the place where the offence was committed, except in cases of requests for assistance according to the third part (of this act).

4 Foreign official records need not be legalized.

5 Foreign requests and their enclosures shall be submitted in German, French or Italian or be accompanied by a translation into one of these languages. Translations shall be officially certified.

6 If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of precautionary measures will not be affected thereby.

ART. 29 Transmission

1 The Federal Office may receive requests directly from the ministry of justice of the requesting State.

2 When provisional measures are to be taken or in urgent cases, the intervention of the International Criminal Police Organisation (ICPO - Interpol) may be enlisted or a copy of the written request sent directly to the authority competent for its execution.

ART. 30 Swiss Requests

1 Swiss authorities may not address to another State requests which they themselves could not grant according to this act.

2 The Federal Office shall be competent in cases of requests for extradition, transfer of proceedings or execution of criminal judgments; it shall take action at the request of the cantonal authority.

3 Conditions which the requested State attaches to the execution of the request shall be observed by the Swiss authorities.

4 The Federal Office may decline to make a request if the importance of the offence does not justify the proceedings.

ART. 31 Costs

1 Foreign requests shall be executed free of charge as a rule.

2 The Federal Council shall fix the conditions under which the requesting State may be charged the costs completely or partially.

3 The expenses for a Swiss request for which another State is reimbursed shall be charged to the proceedings that caused the request to be made.

4 The Federal Council shall fix the sharing of costs between the Confederation and the cantons.

PART 2: EXTRADITION

CHAPTER 1: CONDITIONS

ART. 32 Foreign Nationals

Foreign nationals may be surrendered to another State for prosecution or execution of a sanction with deprivation of liberty regarding acts which come under its jurisdiction if this State requests extradition of if it accepts the Swiss request to prosecute the offence or execute the sanction.

ART. 33 Persons under 20 years

1 Children and juveniles as defined in the Swiss Penal Code whose extradition is requested shall, if possible, be repatriated by the juvenile authorities. The same applies for persons between the age of 18 and 20 if extradition could endanger their mental development or social rehabilitation.

2 Repatriation shall have the effects of an extradition.

ART. 34 Surrender of objects

1 If the conditions for extradition are fulfilled, objects and valuables which may serve as evidence or which originate from the offence shall also be surrendered.

2 The surrender of objects shall be independent of the surrender of the person pursued.

3 Rights of authorities and bona fide acquired rights of third parties in objects or valuables which are to be surrendered shall remain unaffected.

4 If such rights are contested, the objects and valuables may not be released until the competent court has ruled or the competent authority has approved the release.

ART. 35 Extraditable Offences

1 Extradition shall be permitted if, according to the documents supporting the request, the offence:

a. is punishable not only under the law of Switzerland but also under the law of the requesting State by a sanction with deprivation of liberty for a maximum period of at least one year or with a more severe sanction and

b. is not subject to Swiss jurisdiction.

2 In determining if an act is punishable under Swiss law, special degrees of guilt and conditions of punishability shall not be taken into account, not even with respect to the personal and temporal scope of application of the provisions of the Swiss Military Penal Code concerning violation of public international law in case of armed conflicts and wartime looting as well as pillaging.

ART. 36 Special Cases

1 As an exception the person pursued may be extradited for an offence which comes under Swiss jurisdiction if special circumstances, especially the possibility of better social rehabilitation, justify it.

2 If one of several offences is an extraditable one (art. 35, para. 1), extradition may be granted for all offences.

ART. 37 Denial

1 Extradition may be denied if Switzerland can assume the prosecution of the offence or the execution of the foreign penal judgement and if this appears to be indicated in regard to the social rehabilitation of the person pursued.

2 Extradition shall be denied if the requesting State does not guarantee that the person pursued will not be executed in the requesting State or if he will be subject to a treatment which will impair his physical integrity.

ART. 38 Conditions

1 The person pursued may be extradited only on condition that the requesting State:

a. shall neither prosecute nor sentence nor re-extradite him to a third State for any offence committed prior to his extradition and for which extradition was not granted;

b. shall not deprive him of his liberty on any other pre-existing ground;

c. shall not bring him before an extraordinary court;

d. shall send the Swiss authorities, upon their request, an officially certified copy of the decision which concludes the penal proceedings.

2 The conditions of paragraph 1, letters a and b shall no longer be applicable 45 days after the conditional or final release of the extradited person if, in spite of being advised of the consequences, he did not leave the territory of the requesting State although he had the opportunity to do so, or if, after leaving that territory, he has returned or been returned by a third State.

ART. 39 Extension

If the extradited person is charged with other offences, the State to which he was extradited may be permitted, upon a new request, to prosecute these offences as well.

ART. 40 Requests by Several States

1 If several States request extradition for the same offence, extradition shall be granted as a rule to the State where the offence was committed or principally perpetrated.

2 If extradition is requested by more than one State for different offences, the decision shall be made having due regard to all circumstances, especially the seriousness of the offences, the place of commission, the chronological order in which the requests were received, the nationality of the person pursued, the better prospect of social rehabilitation and the possibility of extradition to another State.

CHAPTER 2: PROCEDURE

SECTION 1: REQUESTS

ART. 41 Documents supporting the Request

In addition to the documents specified in article 28, paragraph 3, the following shall be enclosed with the request:
the original or an officially authenticated copy of an enforceable judgment, of the warrant of arrest or of any other document issued in accordance with the regulations of the requesting State and having the same effect.

ART. 42 Request for Search and Arrest

Request for search and arrest with a view to extradition shall contain, in addition to the items of information specified in article 28, paragraph 2 and 3, letter a, references to the following:

a. the existence of a valid warrant of arrest, the date of its issuance and the name of the issuing authority;

b. the intention of the competent authority to make a request for extradition.

ART. 43 Acceptance of the Request for Consideration

The Federal Office shall decide whether and under what conditions it will agree to consider the request.

SECTION 2: PROVISIONAL MEASURES

ART. 44 Arrest

Foreign nationals may be arrested with a view to extradition on the basis of a request by an Interpol National Central Bureau or the Ministry of Justice of another State or on the basis of an international look-out notice in a police gazette (list of wanted persons). Article 52, paragraph 1 and 2 shall apply by analogy.

ART. 45 Seizure of Objects

1 At the time of arrest, objects and valuables which can serve as evidence in foreign criminal proceedings or which originate from an offence shall be seized.

2 The cantonal authorities may, if necessary, order that the arrested person or the rooms be searched.

ART. 46 Notice of Execution. Duration of the Measures

1 Arrest and seizure shall be reported to the Federal Office.

2 They shall continue until a decision concerning the detention awaiting extradition is rendered but at the most until the third workday after the arrest.

SECTION 3: DETENTION AWAITING EXTRADITION AND SEIZURE

ART. 47 Warrant of Arrest and Other Decrees

1 The Federal Office shall issue a warrant of arrest with a view to extradition. It may decline to do so, especially if the person pursued:

a. probably will not elude extradition and will not endanger the criminal investigation or

b. can prove without delay that he was not at the place of the offence when it was committed.

2 If the person pursued is unfit to remain in detention or if there are other valid reasons, the Federal Office may order measures other than detention to ensure his presence.

3 At the same time it shall order which objects and valuables will remain seized or are to be seized.

ART. 48 Contents

1 Decrees under article 47 shall contain:

a. information, provided by the foreign authority, concerning the identity of the person pursued and the offence alleged against this person;

b. the name of the office which made the request;

c. the confirmation that extradition will be requested;

d. the notice regarding the right of appeal according paragraph 2 and the right to retain counsel.

2 An appeal against these decrees may be lodged within ten days with the Federal (Supreme) Court, Chamber of Indictment. Article 214 et seq. of the Act on Federal Criminal Procedure shall apply by analogy.

ART. 49 Execution

1 The execution of decrees under article 47 shall fall within the jurisdiction of the cantonal authorities.

2 The warrant of arrest with a view to extradition shall not be valid as long as the prosecuted person is held in custody or serving a sentence.

3 The person pursued may neither be released nor be deported from Switzerland without the consent of the Federal Office.

ART. 50 Lifting of Detention

1 The Federal Office shall lift the detention 18 days after the apprehension if the request for extradition and its enclosures have not been received. This period may be extended for special reasons up to 40 days.

2 If the person pursued is already detained, the time shall start to run when he is detained with a view to extradition.

3 Detention with a view to extradition may be exceptionally lifted at any stage of the proceedings. The person pursued may lodge a petition for release at any time.

4 In addition, articles 53 - 60 of the Act on Federal Criminal Procedure shall apply by analogy to the lifting of detention.

ART. 51 Continuation and Renewal of Detention

1 If the request and its enclosures are received in time and if extradition is not obviously inadmissible, detention shall continue throughout the whole proceedings without special order.

2 If the person pursued was released, the detention with a view to extradition may be re-ordered.

SECTION 4: PREPARATION OF EXTRADITION DECISION

ART. 52 Right to Be Heard

1 The request and the documents supporting it shall be submitted to the person pursued and to his counsel. When formally present-

ing the person pursued with the warrant of arrest with a view to extradition, the cantonal authority shall ascertain if the person pursued is identical with the person mentioned in the request; it shall explain to him the conditions of extradition and of informal surrender and make reference to his right to appeal, to retain counsel or to have counsel officially appointed.

2 The person pursued shall be questioned briefly about his personal situation, especially his nationality and his relationship with the requesting State and asked if and for what reasons he raises objections to the warrant of arrest or his extradition. His counsel may assist in this interview.

3 Should the extradited person be prosecuted for other offences or re-extradited to a third State, the Federal Office shall cause him to be questioned on the record according to paragraph 2 by a judicial authority of the requesting State.

ART. 53 Proof by Alibi

1 If the person pursued claims that he is able to prove that he was not at the scene of the offence when it was committed, the Federal Office shall make the necessary investigations.

2 Extradition shall be denied in clear cases. In other cases, the exculpatory evidence shall be submitted to the requesting State which shall be asked to declare within short time whether it will maintain the request.

ART. 54 Informal Surrender

1 If the prosecuted person places on the record before a judicial authority that he waives extradition proceedings and if he requests informal surrender, the Federal Office shall order it unless there are special considerations prohibiting it.

2 The waiver may be revoked as long as the Federal Office has not ordered the surrender.

3 The informal surrender shall have the effect of an extradition.

SECTION 5: DECISION ON EXTRADITION

ART. 55 Competence

1 The Federal Office shall render the decision on extradition.

2 If the person pursued claims to be charged with a political offence or if the investigation reveals serious reasons to believe that the offence is of a political nature, the Federal (Supreme) Court shall decide the case. The Federal Office shall send the file to this Court with its proposal. The person pursued shall be given the opportunity to take position.

3 The procedure of the administrative court appeal according to article 25 shall apply by analogy.

SECTION 6: EXECUTION

ART. 56 Executability

1 Extradition may be executed if the person pursued:

a. explicitly requests immediate execution

b. does not announce within five days after notice of the decision that he will lodge an appeal.

2 If extradition is refused, the Federal Office shall lift the detention with a view to extradition.

ART. 57 Extradition

1 The Federal Office shall give the necessary orders in agreement with the cantonal authorities.

2 It shall notify the requesting State of the decision as well as of the date and place of surrender.

ART. 58 Postponement. Provisional Surrender

1 The surrender may be postponed as long as the person to be extradited is being prosecuted in Switzerland for other offences or if he has to serve a sanction with deprivation of liberty.

2 However, provisional surrender of the person pursued may be granted if:

a. Swiss criminal proceedings are not prejudiced by it and

b. the requesting State has guaranteed to keep the person pursued in custody during his stay in that State and will return him regardless of his nationality.

ART. 59 Return of Objects

1 Objects and valuables that the requesting State does not need as evidence may be retained, particularly if:

a. the victim lives in Switzerland and if they have to be returned to this person;

b. a person not involved in the offence shows probable cause that he has acquired rights to the said property in good faith in Switzerland and that his claims to it are not secured, or

c. the objects and valuables are necessary for pending criminal proceedings in Switzerland.

2 Free restitution of the evidence furnished may be requested under the same conditions.

ART. 60 Fiscal Lien

1 If objects or assets are handed over and their return is waived, the customs lien or any other real liability according to Swiss customs- or tax-law shall not be claimed if the owner who suffered damage by the offence does not owe the duty or tax himself.

2 The waiver of such a fiscal lien may be made dependent on reciprocity.

ART. 61 Time Limit for Taking Over

If the requesting State does not take the necessary steps to take over the person to be extradited within ten days after notification of the execution order, he will be released. This time limit may be extended up to 30 days upon a request substantiated by the requesting State.

ART. 62 Costs

1 In case of extradition to a foreign country the Confederation will pay the costs for detention and transportation as far as they are usually defrayed by the requested State in international cooperation.

2 The personal property of the person pursued may be used to cover the costs to the extent that it is not required to be surrendered (to the requesting State).

PART 3: OTHER ACTS OF ASSISTANCE

CHAPTER 1: CONDITIONS

SECTION 1: IN GENERAL

ART. 63 Principle

1 Assistance within the meaning of this part shall comprise the transmission of information, as well as procedural and other official acts permitted under Swiss law, as far as these acts appear to be necessary for proceedings carried out abroad in criminal matters or serve to retrieve the proceeds of the offence.

2 Acts of assistance shall include in particular: service of documents, obtaining of evidence, production of records or papers, search of persons or rooms, seizure, confrontation and transit of persons.

3 The following are in particular considered as proceedings carried out in criminal matters:

a. the prosecution of criminal offences (art. 1, para. 3);

b. administrative measures against an offender;

c. execution of sentences and pardon;

d. compensation for unjustified detention.

4 Assistance may also be granted to the European Court of Human Rights and to the European Commission on Human Rights in proceedings regarding the safeguarding of Human Rights and Fundamental Freedoms.

5 Assistance which will exonerate a person pursued shall be permitted even if the reasons for exclusion according to articles 3 - 5 are given.

ART. 64 Compulsory Measures

1 Measures according to article 63 which require the application of compulsory measures may be ordered only if the description of the relevant facts of the case shows that the offence prosecuted abroad contains the elements, other than intent or negligence, of an offence punishable according to Swiss law. They have to be carried out in accordance with Swiss law.

2 Such measures shall also be allowed for the exoneration of a person pursued even if the offence prosecuted abroad is not punishable in Switzerland.

ART. 65 Application of Foreign Law

The following rules shall apply to acts of assistance:

a. the presence of parties to the foreign proceedings and access to the files may be granted if the requesting State so requires based on its laws;

b. the statements of witnesses or experts shall be affirmed in the form prescribed by the laws of the requesting State and explicitly required in the request, even if the applicable Swiss law does not provide the affirmation; forms necessary to obtain other evidence that is admissible in court may be taken into consideration if the requesting State explicitly so requires;

c. the forms for obtaining and affirming evidence according to letter b must be compatible with Swiss law, and no essential disadvantage may result therefrom to the persons involved;

d. testimony may also be refused as far as the law of the requesting State provides or if the fact of testifying may cause penal or disciplinary sanctions to be taken according to the laws of that State or of the State where the examined person lives.

ART. 66 Denial of Assistance

Assistance may be denied if the person pursued resides in Switzerland and proceedings are already pending here regarding the offence to which the requests refers.

ART. 67 Use of Information

1 Information obtained through the means of judicial assistance shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to offences for which assistance is not admissible. Any further use shall be subject to approval by the Federal Office.

2 Permission to review the files, granted to a foreign State which, by virtue of being an injured party, takes part in a Swiss penal proceeding is subject to the same condition.

SECTION 2: SPECIFIC ACTS OF ASSISTANCE

ART. 68 Service of Documents. General Provisions

1 Service of documents which is requested from a Swiss authority may be effected by personal delivery to the recipient or by mail.

2 The Federal Council may permit the direct service of documents from abroad upon the recipient in Switzerland. It shall determine the conditions (for such service).

3 Service is presumed to be effected if acceptance or refusal to accept has been confirmed in writing.

ART. 69 Service of Summons. Safe Conduct

1 Whoever accepts a summons to appear before a foreign authority shall be under no obligation to comply.

2 Summons containing threats of compulsion shall not be served.

3 Service of a summons may be subjected to the condition that the recipient shall be guaranteed safe conduct for an appropriate period of time and that he will not be prevented from freely leaving the territory of the requesting State. If the recipient so requires, the authority effecting service shall ask the requesting State to give a written assurance thereof before proof of service is furnished.

ART. 70 Transfer of Arrested Persons

1 Persons held in custody in Switzerland may be transferred to a foreign authority for the purpose of investigation if they are guaranteed safe conduct and if it is assured that they will be kept in custody and returned to Switzerland upon request.

2 Persons who are not indicted abroad and Swiss citizens may be transferred only with their written consent. This shall not be necessary if the transfer is required for the execution of a Swiss request or for confrontation with other persons abroad.

ART. 71 Transit

1 In the interest of a proceeding carried out in an other State and permitted under this act, the Federal Office may grant transit (through Swiss territory) on submission of a request by that or a third State without hearing the affected person. The decision cannot be appealed. Only the requesting State shall be notified.

2 No authority shall be required if the detained person is to be transported by aircraft over Swiss territory without intermediate landing. In case of an unscheduled intermediate landing, the detained person may be kept in custody only if

a. the conditions exist for his arrest according to article 44 or

b. the State causing the transport to be made has previously informed the Federal Office by indicating the reason for surrender and the offence which is the basis for it.

3 In case of measures taken for prosecution or for execution of sentences in Switzerland, transit may be interrupted solely with the agreement of the Federal Office.

ART. 72 Maintaining of Custody

1 If a detained person is surrendered to the Swiss authorities in the course of an act of assistance, the warrant for his arrest issued abroad shall also be valid in Switzerland for the period of his stay in Switzerland.

2 During transit, the person pursued shall be kept in custody by virtue of the order for transit given by the Federal Office.

3 In those cases, the detained person may be released only with the agreement of the competent foreign authority.

ART. 73 Safe Conduct in Switzerland

1 A person with habitual residence abroad and who appears in Switzerland in a criminal case pursuant to a summons may neither be prosecuted nor restricted in his personal freedom for reasons that occured prior to his entry into Switzerland.

2 The person pursued shall enjoy no safe conduct regarding the offences specified in the summons.

3 The safe conduct provided in paragraph 1 shall cease when this person leaves Switzerland but at the latest three days after he is dismissed by the summoning authorities.

ART. 74 Surrender of Objects

1 Upon request, objects, particularly documents and valuables whose seizure is permitted by Swiss law, as well as official records and decisions, shall be placed at the disposal of the authorities competent in criminal matters or for issuing or withdrawing driving licences, as far as these objects may be of significance in their decision.

2 Other objects and valuables originating from an offence may be surrendered for the purpose of returning them to the entitled person even outside criminal proceedings in the requesting State.

3 Rights of authorities and third parties shall be governed by article 34, paragraphs 3 and 4; article 59 shall apply to the surrender and article 60 to fiscal liens.

CHAPTER 2: PROCEDURE

SECTION 1: REQUESTS FOR ASSISTANCE

ART. 75 Competence

1 Requests for assistance may be submitted by authorities which are competent to investigate offences or to render decisions in other proceedings to which this act is applicable.

[2] Swiss authorities may also accept from the parties authorized to make them requests for the execution of procedural acts which, according to the laws of the requesting State, are incumbent upon the parties.

ART. 76 Contents and Documents

In addition to the information and documents required by article 28, the following shall be specified in or enclosed with a request:

a. in requests for service: name and address of the recipient and his position in the proceedings as well as the kind of document to be served;

b. with requests for transit: one of the documents listed in article 41;

c. with requests for search of persons or rooms, for seizure or surrender of objects: a confirmation that these measures are permitted in the requesting State.

ART. 77 Address

[1] Foreign requests shall be addressed to the appropriate cantonal authority through the intermediary of the Federal Office.

[2] Requests for extracts from the Register of Convictions or for determining the identity of a person shall be addressed to the Swiss Central Police Bureau.

SECTION 2: JURISDICTION

ART. 78 Federal Office

[1] The Federal Office shall examine whether the request meets the formal requirements of this act and forward it to the appropriate cantonal authority unless assistance appears to be obviously inadmissible.

[2] It may impose conditions on the granting of assistance.

[3] It shall issue the necessary orders for transit.

[4] It shall request assistance which is needed outside criminal proceedings.

ART. 79 Cantonal Authorities

[1] The cantonal authorities shall decide on the granting of assistance and on questions of interstate procedure unless a federal authority is exclusively competent to do so.

[2] Insofar direct contacts between the competent Swiss and foreign prosecuting authorities are agreed upon, they deal with the merits of the request if the conditions of article 78, paragraph 1, are fullfilled.

[3] Articles 6, 26 and 27 of the Federal Act on Administrative Procedure shall be applicable to the examination of records also in a cantonal proceeding. The entitled person may also examine the request for assistance and the accompanying documents as far as this is necessary for the safeguard of his interests. The defendant who is not personally affected by the measure of assistance is entitled to this right only if he has usual residence in Switzerland and only in the interest of safeguarding his rights of defence in the foreign criminal proceeding.

[4] The Federal Office, in its capacity as supervising authority, may challenge the decrees of cantonal authorities by means of appeals provided by cantonal law according to article 23.

ART. 80 Investigations in Several Cantons

If the execution of a request necessitates investigations in several cantons, the Federal Office may charge the competent authority of one of these Cantons with directing the investigations. Articles 352 - 355 of the Swiss Penal Code apply by analogy.

ART. 81 Police Requests

[1] The commissioners of police of the Confederation and the cantons may make requests according to article 63 on their own behalf and may grant such requests emanating from foreign authorities.

[2] The Federal Council shall issue rules on the details and procedure.

SECTION 3: SPECIAL PROVISIONS

ART. 82 Safeguarding Privacy

1 If facts which fall within the scope of privacy of a person who appears not to be involved in the offence prosecuted abroad were revealed to parties to the foreign proceedings during the execution of a request, the parties shall be excluded from the subsequent enquiries until the conditions for the disclosure of the secret are fulfilled.

2 Information about such facts, which is contained in documents or decisions which are surrendered under article 74 or submitted for examination to the parties or to foreign authorities, shall be removed unless the conditions for disclosure are met.

3 The forwarding of information from privacy shall be subject to appeal according articles 23 and 25.

ART. 83 Conclusion of the Assitance Proceeding

1 When the executing authority considers the assistance proceeding concluded, it shall forward the files to the competent cantonal or federal authority. This authority shall check whether the request has been executed correctly and, if necessary, return the files to the executing authority for completion.

2 The documents of execution may be delivered to the requesting authority

a. if no appeals were made during the execution of the request;

b. if the check under paragraph 1 shows that neither secrets of third persons are affected nor that there are doubts regarding the granting of assirtance.

3 If the conditions of paragraph 2 are not fulfilled, a decree subject to appeal shall order if and to what extent or in what form the documents of execution are delivered.

ART. 84 Costs

The requesting State is charged the costs for

a. experts;

b. surrender of objects for return to the entitled person.

PART 4: TRANSFER OF PROCEEDINGS

CHAPTER 1: CONDITIONS

SECTION 1: ASSUMPTION BY SWITZERLAND

ART. 85 Principle

1 Switzerland may exercise its jurisdiction instead of the State of perpetration with respect to an offence committed abroad if

a. extradition is not permitted;

b. the person pursued has to answer in Switzerland for other more serious offences and

c. it is guaranteed that the requested 149 State will not prosecute him for the same offence after acquittal or execution of sentence in Switzerland.

2 The prosecution of an alien who has his habitual residence in Switzerland may also be assumed if his extradition cannot be justified and the assumption of the prosecution seems appropriate with regard to his personal situation and social rehabilitation.

3 These rules shall not apply if the offence is subject to Swiss jurisdiction on the basis of other provisions.

ART. 86 Applicable Law

1 The offence shall be judged according to Swiss law as if it were committed in Switzerland.

2 The foreign law shall apply if it is more lenient. The judge may impose only sanctions provided by Swiss law.

3 Proceedings in the absence of the defendant shall not be permitted.

ART. 87 Jurisdiction

If there is no Swiss jurisdiction yet, it shall be determined according to article 348 of the Swiss Penal Code .

SECTION 2: TRANSFER TO FOREIGN STATES

ART. 88 Conditions

An other State may be requested to assume the prosecution of an offence subject to Swiss jurisdiction if its laws allow prosecution and judicial punishment of the offence and if the person pursued

a. has his residence there and if his extradition to Switzerland were inappropriate or not permitted or if he

b. is extradited to this State and if the transfer of the prosecution were to lead to the expectation of a better social rehabilitation.

ART. 89 Effects

1 If an other State assumes prosecution, Swiss authorities may not take further measures against the person pursued because of the same offence

a. as long as the requested State has not given notice that it is not in a position to conclude the prosecution, or

b. if according to the decision rendered in this State the conditions of article 5, letter a or b, are met.

2 The effects of the statute of limitations shall be suspended as long as the procedure including execution of the sentence is pending in the requested State.

3 If the person pursued was extradited to the requested State for other offences, this State need not observe the conditions of extradition according to article 38 insofar as it grants the request for prosecution.

CHAPTER 2: PROCEDURE

ART. 90 Documents

In addition the documents specified in article 28, paragraph 3, the record of criminal proceedings as well as possible exhibits shall be enclosed with the request.

ART. 91 Decision on the Request

1 The Federal Office shall decide after discussion of the case with the prosecuting authorities whether the foreign request will be accepted.

2 If it accepts the request, it shall transmit the file to the prosecuting authority and notify the requesting State and the concerned person.

3 This decision shall not create an obligation to institute criminal proceedings.

4 The Federal Office may deny assumption of the prosecution if there are pertinent reasons against it or if the significance of the offence does not justify it.

ART. 92 Foreign Acts of Investigation

Any act of investigation carried out by the authorities of the requesting State according to its law shall be considered equal to a corresponding Swiss act of investigation.

ART. 93 Costs

1 The costs of the proceedings fixed by the requesting State shall be added to the costs of the proceedings in Switzerland and collected. They will not be refunded to the requesting State.

2 The cantons shall dispose of paid fines, confiscated objects or forfeited amounts.

3 The requested State shall be notified of the costs of the proceedings incurred in Switzerland if the requested State assumes prosecution. Their reimbursement shall not be required.

PART 5: EXECUTION OF CRIMINAL JUDGMENTS

CHAPTER 1: CONDITIONS

SECTION 1: ASSUMPTION BY SWITZERLAND

ART. 94 Principle

[1] Final and enforceable criminal judgments of an other State may be executed upon its request if

a. the convicted person has his habitual residence in Switzerland or has to answer here for a serious offence;

b. the subject of the conviction is an offence committed abroad which, if similarly committed in Switzerland, would be punishable here, and

c. execution in Switzerland seems to be appropriate for one of the reasons specified in article 85, paragraphs 1 and 2, or likely to be barred in the requesting State.

[2] (Penal) sanctions imposed abroad shall be executed insofar as they do not exceed the maximum penalty provided by Swiss law for a corresponding offence. (Penal) sanctions that remain below the minimum penalty according to Swiss law may be executed.

[3] These rules shall not apply if the Penal Code explicitly excludes (art. 6 PC) or explicitly prescribes (art. 5 PC) the execution of the penalty imposed abroad.

[4] Fines as well as costs arising from procedures according to article 63 may also be levied if the convicted person has his habitual residence abroad but has assets at his disposal in Switzerland and if the requesting State grants reciprocity.

ART. 95 Inadmissibility of the Declaration of Execution

[1] The declaration of execution (exequatur) shall not be permitted if

a. the conviction took place at a time when, under Swiss law, the prosecution would have finally come within the statute of limitations;

b. the (penal) sanction would have come within the statute of limitations according to Swiss law if a Swiss authority had imposed it at the same time, or

c. the offence is also subject to Swiss jurisdiction and if according to Swiss law no sanction can be imposed for other reasons.

[2] Decisions on costs shall be declared executable only if the costs are to be paid to the State.

ART. 96 Denial of Execution

The judge shall partly or completely deny execution if

a. the convicted person has incurred a sanction with deprivation of liberty in Switzerland because of other offences and if the requested execution resulted in an obviously more severe punishment than if the offences taken as a whole were to be judged in Switzerland, or

b. the execution of one of the accessory penal measures in Switzerland is not permitted, or

c. he estimates that the convicted person for good cause opposes the execution of a judgment or penal decree that was rendered in his absence and that is no longer subject to an objection or appeal according to the law of the requesting State.

ART. 97 Binding Force of the Finding of Facts

When judging the punishability and the possibility of prosecution under Swiss law, the judge shall be bound to the finding of the facts on which the (foreign) decision relies. As far as they do not suffice, the gathering of (additional) evidence may be ordered.

ART. 98 Effects of Assumption

If Switzerland assumes the execution, criminal proceedings against the convicted person for the same offence must not be instituted or continued here.

ART. 99 Utilization of Swiss Institutions by Foreign States

[1] If the conditions of article 94, paragraph 1 are not met, sanctions restraining personal liberty which have been imposed upon a non-Swiss national in another State may be executed in Switzerland under Swiss law if the other State cannot execute them itself.

2 In this case, the final and enforceable foreign decision shall constitute the legal base for the restriction of the convicted person's personal liberty.

3 If persons are surrendered to Switzerland according to paragraph 1, they may be neither prosecuted nor punished nor extradited to a third State by the Swiss authorities for offences that they committed before their surrender and that were not the object of their convictions unless there are arrangements to the contrary made with the competent authorities of the surrendering State. These effects shall expire ten days after conditional or final release from the institution.

4 The Federal Council shall issue rules on the details.

SECTION 2: TRANSFER TO A FOREIGN STATE

ART. 100 Principle

An other State may be requested to assume the execution of a Swiss criminal judgment if

a. the observation of the binding force of the judgment according to article 97 is guaranteed and

b. the transfer of the execution leads to a reasonable expectation of better social rehabilitation of the convicted person or if Switzerland cannot obtain his extradition.

ART. 101 Conditions of Transfer

The convicted person who is detained in Switzerland may only be transferred with a view to execution (of the judgment) under article 100 if he agrees and if the requested State can be expected to accept the conditions set by the Federal Office.

ART. 102 Effects of Transfer

1 If an other State assumes the execution of the criminal judgment, the Swiss authority shall renounce execution as long as the requested State has not communicated that it will not conclude it.

2 The convicted person may be taken into custody so as to guarantee his transfer.

3 Articles 89, paragraph 2 and 3 apply by analogy.

CHAPTER 2: PROCEDURE

SECTION 1: REQUEST

ART. 103 Documents

In addition to the documents specified in article 28, paragraph 3, the following shall be enclosed with a request:

a. the original or an officially authenticated copy of the sentence with a certificate attesting that it is legally enforceable;

b. a certificate attesting the (period of) detention suffered in the requesting State;

c. if the requested State so requests, the original or officially authenticated copy of the penal file.

ART. 104 Decision on the Request

1 The Federal Office, after conferring with the authority which will execute the request, shall decide whether to accept the foreign request. If it accepts, it shall convey the file and its opinion to the executing authority and inform the requesting State. Article 91, paragraph 4 applies by analogy.

2 If there is Swiss jurisdiction and if a sanction which is more severe than the one provided by Swiss law was imposed abroad, the prosecution may be assumed instead of the execution of the judgment if the requesting State so requests.

SECTION 2: PROCEDURE OF EXEQUATUR

ART. 105 Competent Judge

The judge who is competent under article 348 of the Swiss Penal Code shall inform the convicted person of the applicable procedure, hear him in the matter, as well as his attorney, and decide on execution.

ART. 106 Declaration of Exequatur

[1] The judge ex officio shall examine whether the conditions for execution are met and gather the necessary evidence.

[2] If the conditions are met, the judge shall declare that the sentence can be executed and take the measures necessary for execution.

[3] The decision shall be rendered in the form of a judgment containing a statement of the rationale therefore. The cantonal law shall provide one appeal.

SECTION 3: EXECUTION

ART. 107 Execution of the Sanction

[1] The sanction determined by the judge shall be executed according to Swiss law.

[2] Execution shall be terminated if the sentence is no longer enforceable in the requesting State.

[3] If a decision solely on costs was executed, the amounts collected after deduction of the costs resulting from the execution will be transferred to the requesting State if it guarantees reciprocity.

ART. 108 Costs

In addition to the costs for the execution of the sanction, those for the procedure of exequatur and other measures of execution shall also be considered costs according to article 31.

PART 6: FINAL PROVISIONS

ART. 109 Repeals and Modifications of Current Law

[1] The Federal Act of the 22nd of January, 1892, on Extradition to Foreign States is hereby repealed.

[2] a. The Penal Code is modified as follows:

3. Exclusion of the Statute of Limitations

Art. 75bis

[1] The following crimes are not subject to the statute of limitations:

1. those aimed at the extermination or suppression of a population group on account of nationality, race, religion or ethnical, social or political relationship;
2. those considered grave in the Geneva Conventions of the 12th of August, 1949, and in the other Conventions on the protection of war victims which have been ratified by Switzerland, if the offence was particularly serious with respect to the way in which it was committed; or
3. those, as a means of extortion or duress, jeopardized or threatened to jeopardize life and limb of men, especially by the use of means of mass extermination or the triggering of catastrophes or when hostages were taken.

[2] If the prosecution came within the statute of limitations according to articles 70 - 72, the court may mitigate the sentence in its discretion.

Transitory Provision

Article 75bis shall apply if the criminal prosecution or the punishment has not yet been barred by the statute of limitation under former law at the time this modification takes effect.

b. The corresponding texts shall be inserted as article 56bis and transitional provision into the Military Penal Law.

[3] The Act on the Organization of the Federal Administration of Justice shall be modified as follows:

2 a. The Penal Code[1)] is modified as follows:

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3. those, as a means of extortion or duress, jeopardized or threatened to jeopardize life and limb of men, especially by the use of means of mass extermination or the triggering of catastrophes or when hostages were taken.

2 If the prosecution came within the statute of limitations according to articles 70 - 72, the court may mitigate the sentence in its discretion.

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Article 75bis shall apply if the criminal prosecution or the punishment has not yet been barred by the statute of limitation under former law at the time this modification takes effect.

b. The corresponding texts shall be inserted as article 56bis and transitional provision into the Military Penal Law .

3 The Act on the Organization of the Federal Administration of Justice shall be modified as follows:

ART. 112 Entry into Force and Referendum

1 This act shall be subject to the optional referendum.

2 The Federal Council shall fix its entry into force.

Council of States,
20th March, 1981

The chairman: Hefti
The secretary: Huber

National Council,
20th March, 1981

The chairman: Butty
The secretary: Koehler